FILED US District Court-UT
MAR 29 '23 PM04:03

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SEALED

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. NICHOLAS FRANK SCIOTTO AND KYLE BLAKE BURBAGE, Defendants.	**INDICTMENT** VIOLATIONS: Count 1: 18 U.S.C. § 371, Conspiracy to Defraud the United States Case: 1:23-cr-00023 Assigned To : Campbell, Tena Assign. Date : 3/28/2023

The Grand Jury Charges:

Introductory Allegations

At all times relevant to this Indictment:

1. Defendants herein and others known and unknown to the Grand Jury ran a scheme to defraud the United States and the Centers for Disease Control and Prevention ("CDC") by obstructing the CDC's COVID-19 vaccination program, whereby Defendants manufactured, sold, and distributed at least 120,000 counterfeit COVID-19 vaccination record cards to persons to undermine the vaccination program and facilitate evasions of public health-and-safety regulations and protocols.

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Defendants

2. Defendant NICHOLAS FRANK SCIOTTO was a resident of Weber County, Utah. During the COVID-19 pandemic, SCIOTTO started and operated an online business out of Utah, whereby he manufactured and sold at least 120,000 counterfeit COVID-19 vaccination record cards, mainly to persons in New York who were subject to tighter COVID restrictions.

3. Defendant KYLE BLAKE BURBAGE was a resident of Berkeley County, South Carolina. BURBAGE knowingly purchased counterfeit COVID-19 vaccination record cards from SCIOTTO to resell them and distribute them to others.

The Federal COVID-19 Vaccination Program

4. On or about January 31, 2020, the Secretary of the United States Department of Health and Human Services ("HHS") declared a national public health emergency under 42 U.S.C. § 247d as a result of the spread of a novel coronavirus to and within the United States. This coronavirus was called SARS-CoV-2, and was also known as "COVID-19." On or about March 13, 2020, as a result of the rapid spread of COVID-19 within the United States, the President of the United States issued Proclamation 9994, declaring a national emergency beginning on March 7, 2020. As part of the response to the pandemic, the federal government provided funding to pharmaceutical and biotechnology companies capable of developing a vaccine for COVID-19.

5. On or about December 11, 2020, the United States Food and Drug Administration (the "FDA") approved the Pfizer COVID-19 vaccine for emergency use. On or about December 18, 2020, the FDA also approved the Moderna COVID-19 vaccine for emergency use. Each vaccine was approved as a two-dose regimen.

6. Then, on or about February 27, 2021, the FDA issued another emergency use authorization (EUA) for the Janssen COVID-19 Vaccine. The Janssen COVID-19 Vaccine was manufactured by Janssen Biotech Inc., a Janssen Pharmaceutical Company of Johnson & Johnson. The Janssen COVID-19 Vaccine was approved as a single-dose regimen.

7. Consistent with these emergency authorizations, the Centers for Disease Control and Prevention ("CDC") prepared for widespread administration of the COVID-19 vaccines, at a variety of locations. The intent was to make a COVID-19 vaccine available to all authorized adults in the United States who wanted to receive a vaccine.

8. The vaccines were made available exclusively through the United States Federal Government. There are no third-party resellers of COVID-19 vaccines and no company or organization is allowed to import COVID-19 vaccines from another country.

9. To make the COVID-19 vaccines available to authorized persons in the United States, the government purchased millions of COVID-19 vaccine doses from Pfizer, Moderna, and Johnson & Johnson. The federal government determined that these COVID-19 vaccine doses were to be distributed at no cost to vaccine recipients through the providers approved by the CDC to receive and distribute the vaccine.

10. To further provide for the administration of COVID-19 vaccines, the United States also contracted with companies to print COVID-19 vaccination record cards according to certain CDC specifications. The United States required that the COVID-19 vaccination record cards include a space to record the dates of the first and (where needed) second vaccine doses, and that the COVID-19 vaccination record cards be distributed as part of the vaccine ancillary kits sent to each vaccine distribution location.

11. To facilitate the proper administration of the COVID-19 vaccines, the CDC and HHS also developed rules and protocols for the entities that would administer the vaccines at locations around the United States ("vaccine distributing entities").

12. These protocols required all vaccine distributing entities that administered the COVID-19 vaccines at physical locations to provide a COVID-19 vaccination record card to each vaccine recipient after they had received their COVID-19 vaccine.

13. To ensure that vaccine distributing entities appropriately administered the COVID-19 vaccines and appropriately distributed COVID vaccination record cards, the CDC required such entities to sign a CDC COVID-19 Vaccination Program Provider Agreement before they could receive COVID-19 vaccines for distribution to the public. Among other things, these CDC Provider Agreements required vaccine distributing entities to:

a. Administer COVID-19 vaccines in accordance with all requirements and recommendations of the CDC and the CDC's Advisory Committee on Immunization Practices;

b. Within 24 hours of administering a dose of COVID-19 vaccine, to record the vaccine recipient's record and to report required information to the relevant state, local, or territorial public health authority;

c. Not sell or seek reimbursement for any COVID-19 vaccine that the federal government provided to the organization without cost;

d. Administer the vaccine regardless of the vaccine recipient's ability to pay for the administration of the vaccine;

e. Conduct its COVID-19 vaccination services in compliance with the CDC's Guidance for Immunization Services During the COVID-19 Pandemic for safe delivery of vaccines;

f. Report the number of doses of COVID-19 vaccines that were unused, spoiled, expired, or wasted as required by the relevant jurisdiction;

g. Provide a completed COVID-19 vaccination record card to every COVID-19 vaccine recipient; and

h. Administer the COVID-19 vaccines in compliance with all applicable state and territorial vaccination laws.

14. The CDC included COVID-19 vaccination record cards in each COVID-19 vaccine shipment to a vaccine distributing entity.

15. The CDC intended the COVID-19 vaccination record cards to be used to reliably identify persons who had received bona fide COVID-19 vaccine doses to facilitate compliance with federal, state, and local government health-and-safety protocols and requirements.

COUNT 1
18 U.S.C. § 371
(Conspiracy to Defraud the United States)

16. The allegations in paragraphs 1-15 are incorporated by reference and re-alleged as though fully set forth herein.

17. On or before March 27, 2021, and continuing to at least September 25, 2021, in the District of Utah and elsewhere,

NICHOLAS FRANK SCIOTTO and
KYLE BLAKE BURBAGE,

defendants herein, did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other and with other individuals both known and

unknown to the Grand Jury, with interdependence among the members of the conspiracy, to defraud the United States by deceit, craft, trickery, and dishonest means for the purpose of impeding, impairing, obstructing, and defeating the lawful governmental functions of the CDC in distributing and administering authorized COVID-19 vaccines and COVID-19 vaccination record cards through approved vaccine distributing entities.

Object of the Conspiracy

18. It was the object of the conspiracy for the defendants NICHOLAS FRANK SCIOTTO and KYLE BLAKE BURBAGE, and other individuals to unlawfully, voluntarily, intentionally, and knowingly defraud the United States of America and an agency thereof, that is, the Centers for Disease Control and Prevention, by impeding, impairing, obstructing, and defeating the lawful governmental functions of the CDC in distributing and administering authorized COVID-19 vaccines and COVID-19 vaccination record cards through approved vaccine distributing entities.

Manner and Means of the Conspiracy

19. Among the manner and means by which defendants NICHOLAS FRANK SCIOTTO and KYLE BLAKE BURBAGE, and others (the "co-conspirators") sought to accomplish the object and purpose of the conspiracy were the following:

a. In furtherance of the conspiracy, on or about March 27, 2021, SCIOTTO began manufacturing counterfeit COVID-19 vaccination record cards in bulk for sale to others.

b. In furtherance of the conspiracy, from on or about March 27, 2021 to about September 25, 2021, while in Utah, SCIOTTO printed out approximately 120,000 counterfeit COVID-19 vaccination record cards that looked identical to bona fide COVID-19 vaccination record cards which were issued by the CDC at the time.

c. In furtherance of the conspiracy, from on or about March 27, 2021 to about September 25, 2021, from Utah, SCIOTTO sold approximately 120,000 counterfeit COVID-19 vaccination record cards to persons who sought to evade government health and safety protocols by pretending to have received a COVID-19 vaccine without ever receiving one.

d. In furtherance of the conspiracy, from on or about March 27, 2021 to about September 25, 2021, SCIOTTO sold many of his counterfeit COVID-19 vaccination record cards to persons living in New York to facilitate their evasion of local health and safety protocols.

e. In furtherance of the conspiracy, from on or about March 27, 2021 to about September 25, 2021, SCIOTTO mailed out or personally delivered approximately 120,000 counterfeit COVID-19 vaccination record cards to card buyers.

f. In furtherance of the conspiracy, SCIOTTO primarily sold the counterfeit COVID-19 vaccination record cards online through Facebook and usually charged approximately:

- $10 each (for orders of 10 or more cards); and
- $7.50 each (for orders of 100 or more cards);
- Plus shipping.

g. In furtherance of the conspiracy, SCIOTTO also knowingly sold the counterfeit COVID-19 vaccination record cards at his wholesale prices to BURBAGE and to his other co-conspirators, who then, with SCIOTTO's knowledge, resold or distributed the counterfeit cards to others, at a time when the counterfeit cards had a market value of $50 to $100 each.

Overt Acts to Effect the Object of the Conspiracy

20. In furtherance of the conspiracy and in order to achieve the unlawful objectives and purposes of their conspiracy, NICHOLAS FRANK SCIOTTO and KYLE BLAKE BURBAGE, and others known and unknown to the Grand Jury, aiding and abetting each other, committed or

caused to be committed the following overt acts, among others, in the District of Utah and elsewhere:

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SCIOTTO's Overt Acts

a. On around March 23, 2021, SCIOTTO commented on a Facebook post originated by another person that "I know someone selling legit vacc [*sic*] cards cheap for people who don't want to partake in a science experiment."

b. On around March 27, 2021, SCIOTTO used Facebook messenger to send an image of stacks of COVID-19 vaccination record cards to Contact 1.

c. On April 19, 2021, SCIOTTO responded to a request to purchase COVID-19 vaccination record cards with a Facebook message offering to sell "10+ cards for $10 each" with a "10 CARD MINIMUM PER ORDER," plus $5 for shipping, and directing the buyer to send the money privately by Venmo or Cashapp—both of which are mobile payment services.

d. On May 14, 2021 and June 2, 2021, SCIOTTO mailed shipments of counterfeit COVID-19 vaccination record cards to Buyer 1.

e. Between on or about April 2021 through June 2021, SCIOTTO sold approximately 45,000 counterfeit COVID-19 vaccination record cards.

f. On or before July 23, 2021, SCIOTTO made a badge with his name and photo to identify himself as a volunteer with Organization 1 (which was a major COVID-19 testing company in Utah at the time) (the "Organization 1 Badge").

g. On or before July 23, 2021, SCIOTTO used the Organization 1 Badge to convince a local print shop owner that SCIOTTO worked for a hospital and was authorized to print out thousands of copies of COVID-19 vaccination record cards.

h. On or before July 23, 2021, SCIOTTO used the local print shop to print out thousands of counterfeit COVID-19 vaccination record cards.

i. On around August 31, 2021 SCIOTTO posted on Facebook a picture of at least four boxes full of COVID-19 vaccination record cards and stated, "Just tell me how many you need. DM me."

j. Between on or around March 2021 through August 15, 2021, SCIOTTO sold over 120,000 counterfeit COVID-19 vaccination record cards.

k. Through at least August 2021, SCIOTTO tried to conceal his illegal behavior from law enforcement by changing every week the envelopes and shipping locations he used to mail the counterfeit COVID-19 vaccination record cards to buyers.

l. On or around August 8, 2021, SCIOTTO instructed BURBAGE that, in order to make the counterfeit COVID-19 vaccine record cards look more authentic, he should advise the counterfeit card purchasers to "handwrite in" the lot numbers onto the counterfeit cards rather than use the stickers that SCIOTTO supplied to BURBAGE.

BURBAGE's Overt Acts

m. From on or before April 19, 2021 through at least August 28, 2021, defendant BURBAGE knowingly purchased counterfeit COVID-19 vaccination record cards from SCIOTTO and resold and distributed them to others.

n. On or about April 19, August 23, and August 25, 2021, BURBAGE caused SCIOTTO to send him at least three packages of counterfeit COVID-19 vaccination record cards, and BURBAGE received them at his home address.

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o. On or about July 16, 2021, defendant BURBAGE sold at least 10 counterfeit COVID-19 vaccination record cards that he obtained from SCIOTTO to others.

All in violation of Title 18, United States Code, Section 371.

A TRUE BILL:

/S/

FOREPERSON OF GRAND JURY

TRINA A. HIGGINS
United States Attorney

Todd C. Bouton
Assistant United States Attorney